

REMARKS

A summary of the amendments to the claims in the present response is presented below.

Claims 2, 4-13, 16-20 are originally presented claims.

Claims 1, 3, 14, and 15 are amended to include the limitation that the electrical current is the from an electric utility and that the power source is a power source that is provided by an electric utility. Support for this amendment is provided at paragraph number 37, lines 34-58.

Claims 1 (as amended), 2, 3 (as amended), 4-13, 14 and 15 (as amended), and 16-20 are thus currently pending in this Application.

A declaration under 37 C.F.R. § 1.131 is attached and made by Craig G. Cochenour, applicant, that establishes the conception of the invention claimed in the above-captioned Application is prior to the effective date of U.S. Patent Application Publication No. US 2004/0195227 (Park).

Applicants respectfully submit that for the above reasons that the pending claims are in condition for allowance and such action is courteously requested at an early date.

Claim Rejection - 35 U.S.C. § 102(e)

Claims 1-5 and 7-20 were rejected under 35 U.S.C. 102(e) for allegedly being anticipated by U.S. Patent Application Publication No. US 2004/0195227 (Park). A declaration of the applicant, Craig G. Cochenour, is attached which establishes the date of conception of the invention claimed in this Application on or before January 11, 2003. January 11, 2003 is a date that is prior to the effective date of the Park reference. Thus, the rejection based upon Park is moot.

For the record, the applicants further state the following: Park is limited to a heated vehicle cushion or steering wheel cover comprising a cushion cover with an upper cover side and a lower cover side, a heating circuit located partially inside the cushion cover and partly outside the cushion cover, wherein the heating circuit comprises a heating element, a temperature control element operatively connected to the heating element, a pressure activated power switch operatively connected to the temperature

control element, a direct current power connector for connection to a mating direct current power source connector, wherein the power connector is located outside of the cushion cover, and a power cabling connecting the heating element, the temperature control element, the pressure activated power switch, and the direct current power connector. Park requires the use of a direct current power connector for connection to a mating direct current power source. Park is concerned solely about providing heat to a driver of an automobile using a direct current power source. In contrast, Claims 1 (as amended), 2, 3 (as amended), 4-5 and 7-13; 14 (as amended); and 15 (as amended) and 16-20, of the present Application recite a patient activated temperature-controlled surface, animal bed, and method of providing comfort to a patient using an activated temperature-controlled surface, respectively, comprising a floor, a temperature source capable of supplying heat or cold, or both to the floor, and an actuator element that is capable of controlling the flow of an electrical current from an electric utility to the temperature source for turning on or off the temperature source, wherein the actuator element is activated and deactivated by the presence or absence of the weight of the patient (or animal-Claim 14). The Claims, as amended, recite electrical current as supplied from an electric utility (i.e. alternating current). Paragraph 37, lines 34-58, of the specification of the Application provide support for the amendment of the claims. The claims of the present Application do not recite a direct current power connector for connection to a mating direct power source connector as required by Park. It is respectfully submitted that Park does not teach or suggest the invention as recited in the claims of the present Application.

Claim Rejection - 35 U.S.C. § 103(a)

Claim 6 was rejected under 35 U.S.C.103 (a) as allegedly being unpatentable over U.S. Patent Application Publication No. US 2004/0195227 as applied to Claim 1 of the Application and in view of U.S. Patent No. 5, 303, 485 (Goldston et al.).

The attached declaration of Applicant and comments with regard to Park set forth hereinabove are equally applicable at this juncture. The declaration submitted by Applicant and attached hereto establishes the date of conception of the invention claimed

in this Application on or before January 11, 2003. January 11, 2003 is a date that is prior to the effective date of the Park reference. Thus, the rejection based upon Park is moot.

For the record, Applicants acknowledge the Examiner's statement that Park does not disclose that the actuator element is a transistor. The Examiner relies upon Goldston et al. for teaching the use of a transistor in footwear having flashing lights in place of a pressure sensitive switch. It is well settled that the mere fact that references can be combined does not make the combination obvious unless the art also teaches or suggests the desirability of the combination. This appears to be applicable in the present situation wherein any reasonable interpretation of the individual references would lead one skilled in the art away from the Applicants' invention as there is no teaching or suggestion in the references cited to teach or suggest the combination unless one employs impermissible hindsight. It is respectfully submitted that one could not reasonably conclude that it would have been obvious to combine the heated vehicle cushion of Park which requires a direct current power connector for connection to a mating direct power current source connector with the footwear having a transistor of Goldston et al. unless one employs impermissible hindsight. Further, even if it were proper to so combine the cited references, the Applicants further submit that effecting such a combination of the references as suggested by the Examiner would not result in a patient activated temperature-controlled surface meeting the elements as recited in pending Claim 6 that is ultimately dependent upon amended independent Claim 1 for the reasons stated *supra*. Such a combination would require a partial deconstruction of the references in a manner not taught or suggested by the references in order to meet the terms as recited in pending Claim 6.

Applicants respectfully submit that the cited references do not teach or suggest the present invention as amended, and that the subject matter of the claimed invention would not have been obvious to one having ordinary skill in the art in view of Park and Goldston et al. at the time Applicants' invention was made. For the above reasons, Applicants courteously request that the rejection under 35 U.S.C. § 103(a) over Park in view of Goldston et al. be withdrawn and that pending Claim 6 be allowed at an early date.

OTHER ART OF RECORD AND NOT RELIED UPON BY EXAMINER

Applicants submit that the other art made of record and not relied upon by the Examiner is not more pertinent than the art relied upon by the Examiner.

CONCLUSION

It is respectfully submitted that Applicants' amended pending claims 1-20 illustrate a patentable patient activated temperature-controlled surface, animal bed, and method of providing comfort to a patient employing the patient activated temperature-controlled surface that are not taught or suggested by any of the art of record. Applicants respectfully submit that the declaration, and remarks set forth in this paper place this Application in a condition for allowance and such action is respectfully requested at an early date.

AUTHORIZATION

Applicants believe that no further government fees are due for the declaration and amendments made to this Application.

The Commissioner is hereby authorized to charge any necessary additional fees associated with this paper to Deposit Account No. 02-4553. A duplicate copy of this Response and Amendment is enclosed for deposit account purposes.

Respectfully submitted,
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